REMARKS

Applicants acknowledge that the claims have already been recognized as satisfying enablement and 35 U.S.C. Section 112, second paragraph. By means of the amendment herein to claim 19, it is believed that all remaining rejections set forth in the Office Action dated July 11, 2007 have been overcome, as described and explained below. Prompt issuance of a Notice of Allowance is anticipated and respectfully requested.

Rejection Based on 35 U.S.C. § 112, First Paragraph, Written Description

The Examiner's assertions on pages 3-5 of the Action have been carefully considered and the claims amended in conformance thereto. The recitation of complementarity as well as sections c) through e) have been removed from claim 19 to overcome this rejection. (The 99% sequence identity now recited in the claims is expressly disclosed in the specification and is within the claim construction boundaries of the Doctrine of Equivalents.) Withdrawal of the Section 112, First Paragraph rejections is respectfully requested.

Rejection Based on 35 U.S.C. § 103

Claims 19-25, 30-31 and 36-48 stand rejected for asserted obviousness over Sasaki et al., Wu et al., Padgette et al. and An et al., all of record. This rejection is respectfully traversed for the following reasons. Sasaki et al. only disclose genomic sequence data, and no further structural or functional information on the gene itself or on the expression pattern is provided. Wu et al. disclose the sequence of the mRNA, without data, and although reference is made to an article in Archives of Biochemistry and Biophysics (copy submitted with a Supplemental Information Disclosure Statement filed concurrently herewith) this latter article only briefly mentions that HMG proteins are abundant, whereas no discussion appears at all about the expression pattern for this particular rice protein--the authors instead studied the DNA-binding and DNA-bending activity of the HMGB1 protein using in vitro assays. Padgette et al. disclose the use of a selectable marker that renders plants resistant to glyphosate, but glyphosate would kill the

plant unless the selectable marker gene product is produced in the required tissues or cells of the plant and in sufficient quantities. It follows logically that selectable marker genes are not useful for characterizing promoter activity

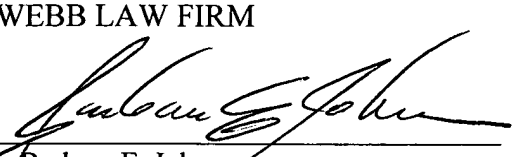
In view of the above, a person skilled in the art in search of a constitutive promoter could not derive the present sequence of SEQ ID NO: 18 by using a combination of the four cited articles, particularly because the references cannot suggest a constitutive promoter (as now claimed) because factors like protein stability or turnover are not taken into account at all. (Support for the promoter's being "constitutive" may be found, for example, in the last paragraph of page 9 of the present specification) as described above, the use of a selection marker does not allow determining an expression pattern of a promoter without further extensive analysis. The claimed invention as recited herein is thus nonobvious over the aggregate prior art.

Conclusion

In view of the foregoing amendments and remarks, the Applicants respectfully submit that all pending claims in the instant application are novel and nonobvious over the prior art and are in condition for allowance. Accordingly, reconsideration and withdrawal of the rejections, and issuance of a Notice of Allowance, are respectfully requested. If the Examiner has any remaining question prior to allowance, a telephone call to resolve any such issue would be very much appreciated.

Respectfully submitted,

THE WEBB LAW FIRM

By: 

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